

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ALAN DECKER,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 07-147-WDS
)	
RONALD BARNHARTT, BRAD J.)	
ROBERT and ROGER WALKER,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

STIEHL, District Judge:

Plaintiff, an inmate in the Centralia Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Upon careful review of the complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; this action is legally frivolous and thus subject to summary dismissal.

Plaintiff states that on December 25, 2006, he was walking in line to chow. Defendant Barnhartt directed his line to go north, and the other line to go east. As Plaintiff followed his line, Barnhartt grabbed him by the coat and shoulders, physically forcing Plaintiff to go the other direction. Plaintiff did as directed, but later complained to another officer about Barnhartt's actions. Plaintiff believes that Barnhartt's behavior constitutes an assault, actionable as excessive force under the Eighth Amendment.

The intentional use of excessive force by prison guards against an inmate without penological justification constitutes cruel and unusual punishment in violation of the Eighth Amendment and is actionable under Section 1983. *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992); *DeWalt v. Carter*, 224 F.3d 607, 619 (7th Cir. 2000). “[W]henver prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 6-7. An inmate seeking damages for the use of excessive force need not establish serious bodily injury to make a claim, but not “every malevolent touch by a prison guard gives rise to a federal cause of action. . . . [the] prohibition of ‘cruel and unusual’ punishment necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort ‘repugnant to the conscience of mankind.’” *Id.* at 9-10; *see also Outlaw v. Newkirk*, 259 F.3d 833, 837-38 (7th Cir. 2001).

Plaintiff's allegations against Barnhartt constitute just such a *de minimis* use of force that is not actionable under the Eighth Amendment. Accordingly, his claim against Barnhartt is dismissed from this action with prejudice.

Plaintiff also names Warden Brad Robert and I.D.O.C. Director Roger Walker as Defendants

in this action, but the statement of claim does not include any allegations against these defendants. “A plaintiff cannot state a claim against a defendant by including the defendant’s name in the caption.” *Collins v. Kibort*, 143 F.3d 331, 334 (7th Cir. 1998). Therefore, Robert and Walker are dismissed from this action with prejudice.

In summary, Plaintiff’s complaint does not survive review under § 1915A. Accordingly, this action is **DISMISSED** with prejudice. Plaintiff is advised that the dismissal of this action will count as one of his three allotted “strikes” under the provisions of 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

DATED: April 12, 2007.

s/ WILLIAM D. STIEHL
DISTRICT JUDGE